

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WARREN JOHNSON,

Plaintiff,

V.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

CASE NO. 2:21-cv-00244-RSL-JRC

ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: Plaintiff’s Request for Production No. 4 (Exhibit B) includes
4 requests for documents which defendant State Farm claims to be confidential, proprietary
5 information. State Farm contends that these documents represent and reflect trade secrets or other
6 confidential, private and proprietary research, development and commercial information relating
7 to claims handling and private and sensitive information. Plaintiff’s Request for Production No.
8 4 and anticipated future requests may also request other materials that State Farm contends are
9 confidential or contain proprietary information in the form of training materials or employee
10 personnel files. State Farm asserts that it has a legitimate business interest and privacy interests in
11 restricting dissemination of this information, particularly to competitors or adversaries.

12 3. SCOPE

13 The protections conferred by this agreement cover not only confidential material (as
14 defined above), but also (1) any information copied or extracted from confidential material; (2) all
15 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
16 conversations, or presentations by parties or their counsel that might reveal confidential material.

17 However, the protections conferred by this agreement do not cover information that is in
18 the public domain or becomes part of the public domain through trial or otherwise.

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
21 or produced by another party or by a non-party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation, including with any appeal. Confidential material
23 may be disclosed only to the categories of persons and under the conditions described in this
24 agreement. Confidential material must be stored and maintained by a receiving party at a location
 and in a secure manner that ensures that access is limited to the persons authorized under this
 agreement. Nothing contained in this Protective Order shall affect the right of the designating
 party to disclose or use its own Confidential material for any purpose.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the designating party, a receiving party may disclose any
3 confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (d) the Court, court personnel, court reporters, videographers, and similar
13 personnel involved in the recording of deposition or trial testimony, provided further that
14 Confidential material filed with the Court shall be requested to be sealed subject to release only by
15 order of the Court or agreement of counsel.

16 (e) copy or imaging services or medical record services, translators, or other
17 vendors retained by counsel to assist in the duplication, obtaining, or processing of Confidential
18 material, provided counsel for the party retaining the copy or imaging service instructs the service
19 not to disclose any Confidential material to third parties and to immediately return all originals
20 and copies of any Confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
be separately bound by the court reporter and may not be disclosed to anyone except as permitted
under this agreement. During the deposition, the designating party shall have the right to exclude
from attendance all persons other than those permitted to view the information under this

1 Protective Order, unless they sign the Acknowledgement and Agreement attached hereto as
2 Exhibit A.;;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or discussing or
6 referencing such material in court filings, the filing party shall confer with the designating party,
7 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
8 remove the confidential designation, whether the document can be redacted, or whether a motion
9 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
10 designating party must identify the basis for sealing the specific confidential information at issue,
11 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
12 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
13 the standards that will be applied when a party seeks permission from the court to file material
14 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
15 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
16 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
17 the strong presumption of public access to the Court's files.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
20 or non-party that designates information or items for protection under this agreement must take
21 care to limit any such designation to specific material that qualifies under the appropriate
22 standards. The designating party must designate for protection only those parts of material,
23 documents, items, or oral or written communications that qualify, so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not swept
unjustifiably within the ambit of this agreement.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

1 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
2 and burdens on other parties) expose the designating party to sanctions.

3 If it comes to a designating party's attention that information or items that it designated for
4 protection do not qualify for protection, the designating party must promptly notify all other parties
5 that it is withdrawing the mistaken designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in this
7 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
9 be clearly so designated before or when the material is disclosed or produced.

10 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
11 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
12 the designating party must affix the word "CONFIDENTIAL" to each page that contains
13 confidential material. If only a portion or portions of the material on a page qualifies for protection,
14 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
15 markings in the margins).

16 (b) Testimony given in deposition or in other pretrial proceedings: the parties
17 and any participating non-parties must identify on the record, during the deposition or other pretrial
18 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
19 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
20 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
21 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
22 at trial, the issue should be addressed during the pre-trial conference.

23 (c) Other tangible items: the producing party must affix in a prominent place
24 on the exterior of the container or containers in which the information or item is stored the word
"CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
the producing party, to the extent practicable, shall identify the protected portion(s). If the
receiving party receives such a designated electronic medium prints or otherwise transfers to

1 another medium any of the information contained on the electronic medium, any resulting
2 document or other medium shall be marked by receiving party or entity as Confidential material
3 in accordance with subsection 5.2(a) or this subsection.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items does not, standing alone, waive the designating party's
6 right to secure protection under this agreement for such material. Upon timely correction of a
7 designation, the receiving party must make reasonable efforts to ensure that the material is treated
8 in accordance with the provisions of this agreement.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
11 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
12 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
13 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
14 challenge a confidentiality designation by electing not to mount a challenge promptly after the
15 original designation is disclosed.

16 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
17 regarding confidential designations without court involvement. Any motion regarding confidential
18 designations or for a protective order must include a certification, in the motion or in a declaration
19 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
20 affected parties in an effort to resolve the dispute without court action. The certification must list
21 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
22 to-face meeting or a telephone conference.

23 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
24 intervention, the designating party may file and serve a motion to retain confidentiality under Local
Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on

1 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
2 the material in question as confidential until the court rules on the challenge.

3 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
4 **LITIGATION**

5 If a party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
7 must:

8 (a) promptly notify the designating party in writing and include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to
11 issue in the other litigation that some or all of the material covered by the subpoena or order is
12 subject to this agreement. Such notification shall include a copy of this agreement; and

13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
14 the designating party whose confidential material may be affected.

15 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

16 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
17 material to any person or in any circumstance not authorized under this agreement, the receiving
18 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
19 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
22 Bound" that is attached hereto as Exhibit A. Compliance with the foregoing shall not prevent the
23 disclosing party from seeking further relief from the court if appropriate.

24 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
MATERIAL

25 When a producing party gives notice to receiving parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
2 is not intended to modify whatever procedure may be established in an e-discovery order or
3 agreement that provides for production without prior privilege review. The parties agree to the
4 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts and
8 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
product, even if such materials contain confidential material.

12 Further, nothing in this Protective Order shall be construed to limit State Farm in its use of
13 its Confidential materials or from disclosing the same. The Protective Order shall not be construed
14 as affecting State Farm's regular business practices for destruction of documents or State Farm's
15 retention obligations under applicable insurance regulations, any evidentiary hold orders in
16 connection with other litigation, and statutory requirements such as applicable statutes of
17 limitations. The Protective Order shall not be construed against State Farm in a way that prohibits,
18 restricts, or requires State Farm to obtain an authorization for the retention, use, or disclosure of
19 nonpublic Confidential materials and records as authorized or as reasonably required by federal or
20 state law or regulation, or court order, rule, including, but not limited to, in a market conduct
21 review, to Medicare authorities if reporting is applicable, to a third-party for analysis of records in
22 anti-fraud efforts (using non-fraudulent data to benchmark), in reporting for rate-making or
23 otherwise, and in paperless electronic claim systems for permissible insurance functions.

24 The confidentiality obligations imposed by this Protective Order shall remain in effect until
the designating party agrees otherwise in writing or a court orders otherwise. The Court shall

1 retain jurisdiction over the parties, their attorneys and all other persons to whom Confidential
2 material has been disclosed for the purpose of enforcing the terms of this Protective Order.
3

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: May 7, 2021

/s/ Steve Malek

Steve Malek, WSBA #28942
Attorneys for Plaintiff

6 DATED: May 7, 2021

/s/ Heather M. Jensen

Heather Jensen, WSBA #29635
Attorneys for Defendant

7 PURSUANT TO STIPULATION, IT IS SO ORDERED

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9 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
10 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
11 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
12 documents, including the attorney-client privilege, attorney work-product protection, or any other
13 privilege or protection recognized by law.

14 Dated May 10, 2021.



15
16 J. Richard Creatura
17 Chief United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Warren Johnson v. State Farm Mutual Automobile Insurance Company*, Case No. 2:21-cv-00244-JCC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: